IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

OP.No. 19222 of 2002(L)

PETITIONER:

PUSHPA, POTHINIPARAMBIL HOUSE,
EDAPPAL P.O., EDAPPAL VILLAGE,
PONNANI TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.D.PEETHAMBARAN
SRI.R.ANIL

RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM-1.

2. THE DISTRICT COLLECTOR, MALAPPURAM.

3. THE DEPUTY TAHSILDAR (R.R.)
TALUK OFFICE, PONNANI.

4. THE VILLAGE OFFICER, EDAPPAL
VILLAGE OFFICE, EDAPPAL,
MALAPPURAM DISTRICT.

ADDL.5. THE DEPUTY COLLECTOR OF CUSTOMS, OFFICE OF THE
COLLECTOR OF CENTRAL EXCISE AND CUSTOMS,
CENTRAL REVENUE BUILDINGS, I.S. PRESS ROAD, COCHIN 682 018

ADDL. R5 IS IMPLEADED AS PER ORDER DATED 2.9.2002 IN O.P.

R1 TO R4 BY G.P. SMT. SMITHA
ADDL. R5 BY ADV. SRI.JOHN VARGHESE, SCGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 32922 OF 2002 IN OP 19222 OF 2002

DISMISSED

2.2.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF DEMAND NOTICE NO. 72/02-03 DATED 14.6.2002 ISSUED BY THE THIRD RESPONDENT IN THE NAME OF P. MADHAVAN UNDER SECTION 34 OF THE REVENUE RECOVERY ACT.

EXT.P2 TRUE COPY OF DEMAND NOTICE NO. 72/02-03 DATED 14.6.2002 ISSUED BY THE THIRD RESPONDENT IN THE NAME OF P. MADHAVAN UNDER SECTION 7 OF THE REVENUE RECOVERY ACT.

EXT.P3 TRUE COPY OF REPRESENTATION DATED 4.7.2002 MADE BY THE PETITIONER TO THE SECOND RESPONDENT.

EXT.P4 TRUE COPY OF ADJUDICATION ORDER IN C.NO. VIII/10/141/89 CUS. ADJ. DATED 4.4.1990 OF THE DEPUTY COLLECTOR OF CUSTOMS, COCHIN 18

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 19222 OF 2002

Dated this the 2nd day of February, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of arrears due from P. Madhavan, who is admittedly petitioner's husband. It is clear from Ext.P2 that liability is penalty levied by the customs authorities. Recovery has to be made against the defaulter, that is by attachment and sale of defaulter's property,both movable and immovable. Petitioner's property cannot be attached and sold merely because she is defaulter's wife. It is for the petitioner to produce title deed of the property before the third respondent from him to consider the petitioner's claim under Section 46 of the RR Act and if petitioner establishes her title, then her property cannot be attached and sold. However, if any bogus sale deed is executed transferring the property in favour of the wife by the defaulter, validity of such transaction will be considered under Section 53 of the TP Act and under Section 44 of the RR Act and if found invalid, third respondent will declare so and proceed for sale of such property.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge